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agreement that all the property be held as personalty, at least so long as the association shall continue to exist.

GENERIC WORDS AS TRADE-MARKS. To prevent unfair competition trade-marks have been protected by law. But, to avoid the creation of monopolies, such protection has been withheld where the words used are descriptive of the quality or ingredients of an article. Thus the name "Crystallized Egg," for preserved eggs, has been held invalid as a trade-mark, since it denotes the ingredients of the article and others have the right to put such a preparation upon the market. *Lamont v. Leedy* (1898) 88 Fed. 72. On the other hand, "Bromo-Caffeine," as applied to a medicine, has been upheld, since it is suggestive, rather than descriptive. *Keasbey v. Chemical Works* (1894) 142 N. Y. 467. The courts in their decisions are prone to say that words denoting quality are invalid as trade marks. It must be borne in mind, however, that a name may be descriptive of quality in two senses: (a) descriptive of the grade, ingredient or property of the article, as in the case cited above; or (b), descriptive of the merits of an article, as associated with or coming from a certain source. If descriptive in this latter sense, the words may be used as a trade-mark. *Dennison Mfg. Co. v. Thomas Mfg. Co.* (1899) 94 Fed. 651.

In the recent case of *Cooke & Cobb Co. v. Miller* (1902) 170 N. Y. 475, the court, PARKER, C. J., dissenting, held that the word "Favorite," as applied to a letter-file was in so far descriptive of quality as not to be a valid trade-mark. The plaintiff had for many years manufactured a letter file, on which the label was the word "Favorite" in heavy type, with some other words, above and below, in small letters. The defendant manufactured a letter-file similar in appearance, on which he also printed the word "Favorite" in large letters. The plaintiff, alleging an infringement of his trade-mark, prayed for a perpetual injunction, which was refused by the court. It will be noticed at once, that the plaintiff relied on his property rights to the word "Favorite", and did not proceed on the broad ground of unfair competition. Now, is the word, "Favorite," of such a nature as to be a valid trade-mark? The court holds that it is descriptive of quality, in the sense that it denotes the properties of the article. The same court, in *Waterman v. Shipman*, 130 N. Y. 301, decided in 1891, held that "Ideal," as applied to fountain pens, could be used as a trade-mark. PARKER, C. J., contends that the decision in the principal case overrules *Waterman v. Shipman*, *supra*. But the two cases are not necessarily inconsistent. In the first place, the name, "Ideal," had by long usage become associated with the origin of the article, hence, under *Dennison Mfg. Co. v. Thomas Mfg. Co.*, *supra*, it could be used as a trade-mark. In the second place, the defendant, Shipman, stamped Waterman's name on pens made by himself and the court held that this was a fraud upon the plaintiff. In other words, the decision of *Waterman v. Shipman*, *supra*, though usually cited as a trade-mark case,

went off largely on the ground of unfair competition. Under this latter doctrine, it is only necessary to prove that the defendant is selling his goods as those of the plaintiff, in order to obtain an injunction. *Croft v. Day* (1843) 7 Beav. 84. See 2 COLUMBIA LAW REVIEW, 245. A fraudulent intent does not have to be shown, it being sufficient that the public is misled. *Waterman v. Shipman, supra*. Yet the court, in the principal case, laid stress on the fact that no fraud or intent to deceive, had been found at the trial in the court below. As the action was brought for an invasion of property rights, this finding was immaterial. But if the court was viewing the case from the standpoint of unfair competition, a different conclusion should have been reached, since the public was bound to be misled by the similarity of the articles. Thus in *Shaver v. Heller & Merz Co.* (1901) 108 Fed. 821, the plaintiff prayed that the defendants be enjoined from using the names "American Ball Blue" and "American Wash Blue," asking for relief on the ground of unfair competition. An injunction was granted. Had the plaintiff framed his bill on the ground that there was an infringement of his trade-mark, no relief could have been given, since a geographical name cannot be monopolized, *Canal Co. v. Clark* (1871) 13 Wall. 311; and because names given to different brands of goods manufactured by the same party are held to be descriptive only of the quality of the article. *Beadleston & Woerz v. Cooke Brewing Co.* (1896) 74 Fed. 229.

ATTACHMENT OF CHATELS TO THE FREEHOLD.—The law of fixtures has given rise to many apparently contradictory decisions, partly because of a failure to discriminate between the questions whether articles have been so affixed to the freehold as to become part of the realty, and whether, if they are so affixed, the tenant has the right to remove them during the term, and partly because many of the cases involve questions of degree, and depend upon facts peculiar to each case. There are cases which do not admit of doubt, "where the subject or mode of annexation is such, as that the attributes of personal property cannot be predicated of the thing in controversy, as where the property could not be removed without practically destroying it, or where it or part of it is essential to the support of that to which it is attached." FOLGER, J., in *Tift v. Horton* (1873) 53 N. Y. 380. On the other hand, there are cases where the court will rule as matter of law that articles have not lost their character of chattels. *Cosgrove v. Troesch* (1901) 62 App. Div. 123. Between these extremes, however, lies a debatable ground, and it is in this field that the apparent conflict arises. The rule is clear in America that, in this class of cases, the intention of the person who affixed the articles is to govern—not the secret intention, but the "intention implied and manifested by his act." *Hopewell Mills v. Taunton Savings Bank* (1890) 150 Mass. 519; *Snedeker v. Warring* (1854) 12 N. Y. 170. In England, on the contrary, the law has not been so clear. The older cases were supposed by Lord HARDWICKE in